have had to give their opinions separately on each charge. Since only one charge was brought relating to all the 9 rounds of ammunition that was not possible. That being so we cannot say what opinions the Assessors, properly directed, would have expressed on a separate charge relating to the eight rounds, and on a separate charge relating to the one round, of ammunition.

Mr. Regester, for the appellant, submitted that the appellant was protected by Section 76 or section 79, particularly the latter, of the Penal Code in that, by mistake of fact, he considered he was covered by the exemption in Regulation 4(2) to the same extent as a police officer. In the view we took of this case it was not necessary to go into this submission.

For these reasons we allowed this appeal and quashed the conviction and sentence. We do not consider this a proper case in which to direct a new trial.

Appeal Allowed.

LIEW CHING v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Willan, C.J., Spenser-Wilkinson and Russell, JJ.) June 4, 1949]
[F.M. — Cr. App. No. 57 of 1949]

Emergency Legislation, Regulations 4(1)(a) and 33(1) — Confession — Admissibility of.

In this case the Appellant was charged with carrying a firearm, a rifle, an offence contrary to Regulation 4(1)(a) of the Emergency Regulations, 1948. He was convicted and sentenced to death. Apart from a statement of the accused which was alleged to have been made at Bahau Police Station on the 18th March, 1949 there was no other evidence that the accused had carried a firearm on the day in question. The statement of the accused which was a confession was made to Assistant Superintendent Smith assisted by his chief clerk Tan Kian as his interpreter. The Appellant who is a Hakka spoke in his own dialect to Tan Kian who is a Hokkien and Mr. Smith took the statement down in English. This was marked Exhibit B. Present at the taking of the statement was a local Chinese shop-keeper, also a Hokkien, and he also at the request of the police took down the statement recording it in Chinese. This was Exhibit C. According to Exhibit B, the caution was administered to the Appellant, before he made the statement, in the correct statutory form; but, according to Exhibit C, the caution which was administered to the Appellant was not according to the statutory form.

Held, that as the caution was not according to statutory form the statement of the accused was inadmissible and should not have been admitted in evidence at the trial.

Case referred to :—

(1) *Poon Heong v. Public Prosecutor* (1949) M.L.J. 114.

CRIMINAL COURT OF APPEAL.

T. K. Sen for the Appellant.

F. G. Cooke (D. P. P.) for the Respondent.

Russell, J. : — The appellant in this case was charged with carrying a firearm, namely, a rifle, an offence contrary to Regulation 4(1) (a) of the Emergency Regulations, 1948. He was convicted and sentenced to death.

On the 29th of July, 1948, according to one Yap Siew Lean, who gave evidence for the prosecution, the appellant and eleven other Chinese, who were all in uniform and all armed with firearms went to a shop-house in Sungei Lui, Bahau, where Yap Siew Lean was living with her husband at about 7.45 p.m. Yap Siew Lean stated that the accused was carrying "a long gun" and picked out at the trial a .303 service rifle as being similar to the one carried by the accused.

She further stated that her husband Poh Teh Lai and another Chinese Tang Hong were led away with their hands tied by the accused and another member of the armed gang and that she later heard two shots. Later the same evening the dead bodies of Poh Teh Lai and Tang Hong were discovered a short distance away from the shop-house with gunshot wounds at the back of their heads.

On the 18th of March, 1949, Yap Siew Lean, who had known the appellant for about a year previous to the 29th of July, 1948, picked him out at a police identification parade. Apart from a statement of the accused which he was alleged to have made at Bahau Police Station on the 18th of March, 1949, at 9.30 a.m. there was no other evidence that the accused had carried a firearm on the day in question.

This statement which was a confession was made to Assistant Superintendent Smith assisted by his chief clerk Tan Kian as interpreter.

The appellant who is a Hakka spoke in his own dialect to Tan Kian who is a Hokkien and Mr. Smith took the statement down in English. (Exhibit B).

Present at the taking of the statement was a local Chinese shop-keeper, also a Hokkien, one Yap Seow Swee, and he also at the request of the police took down the statement recording it in Chinese. (Exhibit C).

At the trial the appellant gave evidence on his own behalf and retracted the confession describing it as an invention by the police and he further stated that anything he did say was said as a result of a severe beating by some unidentified Sikh policeman.

We rejected the allegations by the appellant that the police had invented any statement or that any member of the police force had beaten him.

There is, however, one important difference between Exhibit B taken down by Mr. Smith in English and the certified translation of Exhibit C, the Chinese version, taken down by Yap Seow Swee. No translation of Exhibit C was available at the trial and Exhibit C was handed by the learned Judge to one of the Chinese assessors who having read it stated it was the same as Exhibit B. This statement was incorrect and it would appear from the record that neither the learned Judge nor the other assessor had any knowledge of the true contents of Exhibit C. According to Exhibit B, the evidence of Mr. Smith and the evidence of Tan Kian the caution which was administered to the appellant before he made the statement was in the correct statutory form as laid down by Regulation 33(1)(b) following the amendment made by Legal Notification No. 2 of 10th of January, 1949. This form reads as follows :—

> It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence at your trial.

According to Exhibit C, the caution which was administered to the appellant made no reference to questions as from this document it would appear that the caution administered to the appellant by the interpreter was as follows :—

> You need not say anything if you do not wish to but anything you may say may be given in evidence at the trial.

When this form of caution is compared with the correct statutory form, it is clear that the former is incomplete because the double reference to questions provided for in the latter is omitted, and following the decision of this Court in *Poon Heong v. Public Prosecutor*[1] any statement made as a result of an incomplete form of caution of this nature is inadmissible.

As the prosecution produced conflicting evidence as to whether in fact the correct statutory caution was given to the appellant (which conflict was never apparent to the learned trial Judge) we were left in doubt as to what words were actually used. It would seem preferable to accept the fact that the form used was the form contained in Exhibit C as Yap Seow Swee took down in Chinese what the interpreter said to the appellant at the time he actually spoke, whereas Mr. Smith took down in English what the interpreter subsequently related he had said to the appellant.

Moreover, Yap Seow Swee could hardly have appreciated the importance of the correct form being used and had no interest in the matter one way or another.

We therefore held that the statement made by the accused to Mr. Smith was inadmissible and it followed that the only evidence implicating the accused was that of Yap Siew Lean.

The learned Judge who saw and heard the witnesses in his summing-up directed the assessors in the clearest possible terms that if they rejected the alleged confession of the appellant they should acquit him because he thought it would be unsafe to convict upon the uncorroborated evidence of the woman Yap Siew Lean. In view of this direction and having decided that the statement was inadmissible we had no alternative but to allow the appeal. We therefore set aside the conviction and quashed the sentence.

Appeal Allowed.

RE R. A. MONTEIRO, DECEASED.

[Orig. Civil Juris. (Laville, J.) June 15, 1949]

[Batu Pahat — Wage-Earner's Administration Petition No. 14 of 1941]

Pensions Enactment, 1929, s. 19 — Laws of Johore — Pensionable emoluments — Bankruptcy Enactment, s. 78 (iii).

Pensionable emoluments payable under s. 19 of the Pensions Enactment, 1929, Laws of Johore to the legal representative of an officer in the Government service who was an undischarged bankrupt is payable to the Official Assignee.

Cases referred to :—

(1) *Re Mohamed Ariff, Ex-parte the Official Assignee Singapore* (1926) S.S.L.R. 166.

(2) *Re F. A. Hendricks, Ex-parte the Official Assignee Singapore* (1936) M.L.J. 89.

(3) *Surman v. Wharton* (1891) 1 Q.B. 491.

WAGE-EARNER'S ADMINISTRATION.

H. N. McLeod for Mrs. L. I. Monteiro.

Lai Kai Joo (Assistant Official Assignee, Johore) in person.

Laville, J. : — R. A. Monteiro, a Class I teacher in the English School, Batu Pahat, was one of the victims of the Japanese in the massacre at Ulu Tiram Estate on 14-3-42.

A Wage-Earner's Administration Order had been made against him on his own application on 9-12-41 at Batu Pahat and as a result the Official Assignee was constituted receiver and assignee of his estate. Notice of the order was published in the Government Gazette of 24-12-41, but owing to the Japanese invasion no